

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FRANCISCO RINCON-COVARRUBIAS,) Case No.: ED CV 13-1733-PJW
Plaintiff,)
v.) MEMORANDUM OPINION AND ORDER
CAROLYN W. COLVIN, Acting)
Commissioner of Social)
Security,)
Defendant.)

I. INTRODUCTION

Plaintiff appeals a decision by Defendant Social Security Administration ("the Agency"), denying his application for Disability Insurance Benefits ("DIB"). He claims that the Administrative Law Judge ("ALJ") erred when he found that Plaintiff could perform his past work as a labor supervisor. For the reasons explained below, the Court concludes that the ALJ erred and remands the case to the Agency for further proceedings.

II. SUMMARY OF PROCEEDINGS

In January 2011, Plaintiff applied for DIB, alleging that he had been disabled since December 2010, due to spondylitis and

1 a lumbosacral strain. (Administrative Record ("AR") 154-62,
2 176.) The Agency denied the applications initially and on
3 reconsideration. (AR 61-85.) Plaintiff then requested and was
4 granted a hearing before an ALJ. (AR 89-92.) On May 29, 2012,
5 he appeared with counsel and testified at the hearing. (AR 36-
6 60.) The ALJ subsequently issued a decision denying benefits.
7 (AR 24-31.) Plaintiff appealed to the Appeals Council, which
8 denied review. (AR 2-17.) He then commenced this action.

9 III. ANALYSIS

10 The ALJ determined that Plaintiff had the residual
11 functional capacity to perform medium work but was restricted
12 from climbing ladders and scaffolds. (AR 27.) He concluded
13 that Plaintiff could perform his prior job as a construction
14 labor supervisor as it is generally performed in the economy and
15 as he performed it. (AR 30.) Plaintiff claims that the ALJ
16 erred in doing so. For the following reasons, the Court agrees.

17 As generally performed, the job of construction labor
18 supervisor requires occasional climbing of, among other things,
19 ladders and scaffolds. See Dictionary of Occupational Titles,
20 No. 850.137-014 (explaining construction labor supervisor job
21 requires climbing up to one-third of the time); and The Revised
22 Handbook for Analyzing Jobs, at 12-4 (defining climbing to
23 include ascending and descending ladders and scaffolding).
24 Obviously, then, Plaintiff cannot perform the job as generally
25 performed in the economy.

26 Nor can he perform the job as he did in the past because he
27 had to stand and walk for eight hours a day (AR 178) and the ALJ
28 limited him to medium work (AR 27), which requires standing and

1 walking for up to six hours a day. See Social Security Ruling
2 83-10. (AR 27, 178.) Thus, the ALJ erred in determining that
3 Plaintiff could perform the job of labor supervisor as generally
4 performed or as Plaintiff had performed it.

5 The only issue that remains is whether the error was
6 harmless, i.e., was it inconsequential to the ultimate decision
7 that Plaintiff was not disabled. See, e.g., *Stout v. Comm'r,*
8 *Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006). The
9 Agency argues that it was because the ALJ determined that
10 Plaintiff could perform other jobs. (Joint Stip. at 16.)
11 Again, the Court disagrees. Though the vocational expert
12 testified that Plaintiff could perform other jobs, with some
13 limitations, (AR 54-59), the ALJ never mentioned those jobs in
14 his decision. And the Court cannot fill in that finding for the
15 ALJ. For these reasons, the Court reluctantly remands this case
16 to the Agency for further proceedings.¹

17 ¹ The Court's reluctance is due to the fact that it appears
18 pretty clear from the record that Plaintiff is not disabled.
19 The best evidence of this is his testimony. As he explained at
20 the hearing, the reason he stopped working was because he was
21 laid off from his job when there was no more work at his
22 company, not because he was injured. (AR 41.) Had he not been
23 laid off, he would have kept working. (AR 41.) And, after he
24 was laid off, he applied for and received worker's compensation
25 benefits (AR 41), which required him to certify that he was
26 ready, willing, and able to work. Cal Unemp. Ins. Code
27 § 1253(c), (e). Further, the treating records in this case are
28 almost non-existent. They make up only 18 pages of the 237-page
administrative record. Needless to say, no doctor ever
concluded that Plaintiff was disabled. In fact, the only doctor
who ever offered an opinion, the examining doctor, found that
Plaintiff was capable of heavy work. (AR 210-14.) All that
being said, the Court is not at liberty to make findings at this
stage and conclude that Plaintiff could perform other jobs and,
therefore, is not disabled.

IV. CONCLUSION

The Agency's decision is reversed and the case is remanded for further proceedings consistent with this Memorandum Opinion and Order.

IT IS SO ORDERED.

DATED: December 23, 2014



PATRICK J. WALSH
UNITED STATES MAGISTRATE JUDGE

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